

NATIONAL REPUBLICAN SENATORIAL COMMITTEE

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May 27, 2014

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Via Hand Delivery

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E St., NW
Washington, DC 20463

Re: MUR 6780

Dear Mr. Jordan:

On behalf of the National Republican Senatorial Committee and Stan Huckaby, in his official capacity as Treasurer (collectively, the "NRSC"), this letter is submitted in response to the complaint filed by Garrett Arwa, Executive Director of the Michigan Democratic Party, and assigned MUR 6780 (the "Complaint"). As described in further detail below, the Complaint is nothing more than a partisan stunt designed to garner headlines. As a result, the complaint is legally deficient because it fails to allege that NRSC engaged in any activities that violate the Federal Election Campaign Act of 1971, as amended (the "Act"), or Federal Election Commission ("Commission" or "FEC") regulations. As explained below, there is no factual or legal basis for the Office of General Counsel ("OGC") to recommend that the Commission take further action on this matter and the Commission must vote to dismiss the NRSC as a Respondent, close the file, and take no further action in this matter.

Facts

The Complaint alleges that "'independent' outside groups [...] appear to be coordinating with [Terri Lynn] Land and her [Senate] campaign in violation of the Federal Election Campaign Act of 1971, as amended ('FECA' or the 'Act')." The allegation appears to be based on public statements made by Ms. Lynn Land that were videotaped at an event and distributed nationwide on the Internet. During her statements, Ms. Lynn Land referred to super PACs as a new player in the political world after the United States Supreme Court *Citizens United* decision. Her statements did not discuss party committees, let alone national party committees, other than to state that their position in the new political world has been diminished. Importantly, she did not mention the NRSC by name in her remarks.

Against this backdrop, the complaint merely references the NRSC in the context of describing permissible activities for a national party committee. Specifically, the complaint states that, "in November 2013, the National Republican Senatorial Committee ('NRSC')

reportedly distributed flyers across the state clearly referencing [Senate candidate] Congressman Peters and accusing Peters of lying to voters about healthcare legislation.”¹ This is the only sentence in the seven-page complaint that references the NRSC. Indeed, although the Complainant urges the Commission to investigate alleged discussions between the Land campaign and “Super PACs and other outside groups” and makes a conclusory statement that any ads aired by such groups that were coordinated with the Land campaign “amount to excessive or prohibited coordinated contributions,” the complaint lacks any allegations whatsoever that the NRSC flyer violates any provision of the Act or Commission regulations. In short, the Complaint fails to state or even hint at a violation of the FECA by the NRSC.²

Legal Analysis

In order for a complaint to satisfy the technical requirements of 11 CFR 111.4, it must “describe a violation of a statute or regulation over which the Commission has jurisdiction.” Here, the complaint fails to allege any violation of the Act or Commission regulations by the NRSC. Indeed, the seven-page complaint includes only one line referencing the NRSC flyer and a footnote citing a news story that provides nothing more than a general description of the flyer as “advertisements that feature facts about ObamaCare’s impact [...]” This is hardly a “clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction” as required by 11 CFR 111.4(d)(3). Instead, it is simply a statement of fact that describes entirely permissible activities. Therefore, the complaint is legally deficient as applied to the NRSC. For this reason alone, the complaint must be dismissed against the NRSC.

It should not come as a surprise to the Michigan Democratic Party that another party committee such as the NRSC would have exercised its authority under the FECA to distribute flyers depicting a candidate for the United States Senate and criticizing that candidate for his support of the Obama Administration’s failed health care law. Indeed, such flyers are exactly the type of lawful communications that party committees such as the NRSC routinely disseminate.³ The Michigan Democratic Party’s social media platforms are

¹ To substantiate this fact, Complainant cites a news article that includes only a general description of the flyers

² In circumstances such as these, the regulations wisely afford the Commission the discretion to notify only those parties alleged with specificity to have violated the law by defining a “respondent” as one who “is alleged to have committed a violation.” 11 CFR 111.4(d)(1). Since the Complainant has not alleged that the NRSC has violated any provision of the Act, the NRSC cannot—by any construction of the term—be considered a “respondent” in this matter. This may explain why the NRSC first received the complaint more than two months after it was initially filed with the Commission with a cover letter indicating that it was “not sent [to the NRSC] earlier due to an administrative oversight.” Even assuming, *arguendo*, that the NRSC is a properly generated respondent, the communication at issue—a flyer criticizing Gary Peters for supporting the Affordable Care Act—did not constitute a coordinated communication on behalf of Terri Lynn Land for Senate because it did not contain express advocacy and it was distributed on November 29, 2013, well outside the 90-day window prior to Michigan’s August 5, 2014 primary and November 4, 2014 general elections.

³ In mischaracterizing the NRSC as “an outside group” and failing to recognize the specific authority afforded to it by virtue of its national party committee status, the Complainant mistakenly implies that, if the NRSC had coordinated such communications with a candidate committee, such communications would, without more,

replete with similar materials.

Given the complaint's utter deficiency with respect to the NRSC, it is difficult to discern what, in fact, the Complainant and the Commission expect the NRSC to address in its response. In light of the Complaint's deficiencies, OGC cannot shift the burden to Respondents to explain why the lawful activities in which it routinely engages as a national party committee comply with federal campaign finance law and regulations.⁴

Moreover, the Commission must vote to dismiss the NRSC as a Respondent in the Michigan Democratic Party's complaint because the complaint does not contain a sufficient basis on which to rest a reason to believe ("RTB") finding. As Commissioners of both political parties have previously recognized, "the Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA ... Unwarranted legal conclusions from asserted facts, *see* SOR in MUR 4869 (American Postal Workers Union), or mere speculation, *see* SOR of Chairman Wold and Commissioners Mason and Thomas in MUR 4850 (Fossella), will not be accepted as true."⁵

In subsequent Statements of Reasons, Commissioners have made clear that "the RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges [...] . The Commission must have more than anonymous suppositions, unsworn statements and unanswered questions before it can vote to find RTB and thereby commence an investigation."⁶

In light of the precedent articulated above, the Michigan Democratic Party's fleeting reference to the NRSC flyers simply does not constitute a sufficient basis for a reason to believe recommendation by the OGC, let alone a vote by the Commission in this matter. Furthermore, if the Office of General Counsel references or develops information not cited in the Complaint in determining whether to recommend that the Commission find reason to believe in this matter, we must be given—and hereby respectfully request—an opportunity to review the additional information used by the OGC and to provide an appropriate response prior to the Commission's RTB vote.⁷

constitute an "excessive or prohibited contribution" to that committee. Complainant misunderstands the nature of the NRSC's authority as a national party committee under the FECA.

⁴ Commission precedents hold that the burden does not shift to a respondent in an enforcement action merely because a complaint has been filed that fails to allege facts that constitute a violation. *See* Statement of Reasons for MUR 4850 by Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2 (July 20, 2000) ("The burden of proof does not shift to a respondent merely because a complaint is filed."). These precedents apply with particular force here where the legally deficient complaint is filed by the opposing political party.

⁵ Statement of Reasons for MUR 4960 by Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas (Dec. 21, 2000).

⁶ Statement of Reasons for MUR 6056 by Vice Chairman Matthew Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at footnote 12 (Dec. 2, 2009).

⁷ *See* Federal Election Commission, Request for Comment on Enforcement Process, 78 Fed. Reg. 4081 (Jan. 18, 2013).

Conclusion

For all the reasons stated above, the OGC should decline to recommend that the Commission find reason to believe that the NRSC violated the Act and the Commission must vote to dismiss the NRSC as a Respondent in this matter, close the file, and take no further action.

Sincerely,

Megan L. Sowards

Megan L. Sowards
General Counsel

1-800-441-0001